

## NOTICE OF PROPOSED RULEMAKING

45-Day Public Comment Period  
May 17, 2019 through July 1, 2019

### California Code of Regulations

#### Title 19. Public Safety

#### Division 4. California Underground Facilities Safe Excavation Board

#### Chapters 1 – 4, Sections 4000 – 4361

The California Underground Facilities Safe Excavation Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a public hearing to accept comments if a written request is received from any interested person, or his or her authorized representative, no later than 15 days before the close of the 45-day written comment period, pursuant to Government Code section 11346.8. Submit requests to the contact persons indicated below.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. Comments will be accepted for 45 days beginning May 17, 2019 and ending July 1, 2019. The written comment period **closes at 12:00 a.m. (PT) on July 2, 2019**. All written comments received by that time and date will be considered and responded to as part of the compilation of the rulemaking file. Submit written comments to:

- Email: [digsaferegs@fire.ca.gov](mailto:digsaferegs@fire.ca.gov) (include in the subject line of the email “Comments: Investigation & Enforcement”), or
- Mail to:

**CAL FIRE / OFFICE OF THE STATE FIRE MARSHAL**

**P.O. Box 944246**

**Sacramento, CA 94244-2460**

**Attn: Diane Arend, Code Development & Analysis**

Hand delivery to:

**CAL FIRE / OFFICE OF THE STATE FIRE MARSHAL**

**2251 Harvard Street, Suite 400**

**Sacramento, CA 95815**

**Attn: Diane Arend, Code Development & Analysis**

**8:00 a.m. to 5:00 p.m. (PT)**

## **AUTHORITY AND REFERENCE**

Government Code sections 4216.11 and 4216.22 authorize the Board to adopt the proposed regulations. The proposed regulations implement, interpret, clarify, and make specific sections 4216, 4216.1, 4216.3, 4216.4, 4216.6, 4216.10, 4216.12, 4216.16, 4216.19, and 4216.24 of the Government Code.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

This rulemaking action implements, interprets, clarifies, and makes specific investigation of possible violations and enforcement of article 2, chapter 3.1, division 5, of title 1 of the Government Code (“Dig Safe Law”), and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations.

### Summary of Existing Laws:

Pursuant to Government Code section 4216.12, subdivision (b), the Board must investigate possible violations of the Dig Safe Law and, commencing July 1, 2020, enforce the Dig Safe Law on persons under its jurisdiction. Following a recommendation by the Board, the Dig Safe Law may also be enforced by the Registrar of Contractors of the State License Board (“CSLB”), the Public Utilities Commission (“PUC”), or the Office of the State Fire Marshal (“OSFM”), which must act to accept, amend, or reject the Board’s recommendation. (Gov. Code, § 4216.6.)

On or before January 1, 2020, the Board is required to adopt regulations to establish minimum elements for an onsite meeting and a mutually agreed-upon plan described in Government Code section 4216.10, subdivision (c)(1), for areas of continual excavation. (Gov. Code, § 4216.11.)

The Board is authorized under Government Code section 4216.22 to prescribe the rules and regulations as may be necessary or proper to carry out the purposes and intent of the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”) and to exercise the powers and duties conferred upon the Board by the Act.

### Summary of Regulations:

The Board is proposing to add sections 4000 through 4361 under California Code of Regulations, Title 19, Division 4, Chapters 1 through 4, prescribing the rules and regulations pursuant to Government Code sections 4216.11 and 4216.22. The regulations proposed in this rulemaking action would establish definitions for certain terms used in the proposed regulations, investigation and enforcement processes, and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations.

### Summary of Effect:

The proposed regulations will require members of regional notification centers to maintain valid and current contact information with the appropriate regional notification center; require regional notification centers to provide updated contact information for their members to the Board upon request; require excavators to notify the appropriate

regional notification center of certain types of damages to subsurface installations; require regional notification centers to transmit the damage notifications to the Board; establish investigation and enforcement processes, including types of sanctions, of the Dig Safe Law on excavators and operators; and establish requirements for excavators and operators for onsite meetings and agreements for areas of continual excavation near high priority subsurface installations.

Comparable Federal Regulations or Statute:

There are no comparable federal regulations or statutes.

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to prevent damage to subsurface installations, which may cause injury, fatality, and damage to other property or the environment, by establishing investigation and enforcement processes, and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations. The specific benefits anticipated from the proposed regulations include increased safe excavation practices near subsurface installations through investigations of possible violations of the Dig Safe Law, and enforcement of the Dig Safe Law.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board has determined that the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that the proposed regulations are the only regulations that concern investigation and enforcement processes under the Dig Safe Law, and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations.

Documents Incorporated by Reference:

The following forms are incorporated by reference in the text of the proposed regulations:

1. Area of Continual Excavation Agreement – Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)); and
2. Area of Continual Excavation Agreement – Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)).

**OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

There are no other matters prescribed by statute applicable to the Board, or to any specific regulation. There are no other matters to identify.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: **None.**

2. Cost or savings to any state agency: Although the proposed action will directly affect a state agency that is an excavator or operator, the Board concludes that any cost will not be significant. Costs depend on a state agency's violation of the Dig Safe Law. A state agency, which is an excavator or operator, that negligently violates the Dig Safe Law is subject to a monetary fine of up to \$10,000; or knowingly and willfully violates the Dig Safe Law is subject to a monetary fine of up to \$50,000. (Gov. Code, § 4216.6.)
3. Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: **None.**
4. Other nondiscretionary cost or savings imposed on local agencies: **None.**
5. Cost or savings in federal funding to the state: **None.**
6. Significant statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action may have an impact on businesses statewide that are excavators or operators, including such small businesses, the Board concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

#### **DECLARATION OF EVIDENCE**

The Board has not relied on any other facts, evidence, documents, testimony or other evidence to make its initial determination of no statewide adverse economic impact.

7. Significant effect on housing costs: **None.**
8. Cost impacts on a representative private person or business: Costs depend on the private person's or business' violation of the Dig Safe Law. A private person or business that is an excavator or operator, that negligently violates the Dig Safe Law is subject to a monetary fine of up to \$10,000; or knowingly and willfully violates the Dig Safe Law is subject to a monetary fine of up to \$50,000. (Gov. Code, § 4216.6.)

#### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Board concludes that it is (1) unlikely that the proposed regulations will eliminate any jobs, (2) unlikely that the proposed regulations will create jobs, (3) unlikely that the proposed regulations will create new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

*Benefits of the Proposed Action:* The proposed regulations will benefit California residents by preventing damage to subsurface installations, which may cause injury, fatality, and damage to other property or the environment, by establishing investigation

and enforcement processes, and onsite meeting and agreement requirements for areas of continual excavation near high priority subsurface installations.

### **SMALL BUSINESS DETERMINATION**

The Board has determined that the proposed regulations may affect small businesses that own, operate, or maintain subsurface installations; and small businesses that perform excavation or excavation related activities near subsurface installations.

### **BUSINESS REPORT**

The proposed regulations create a reporting requirement on excavators to notify the appropriate regional notification center of certain damages to subsurface installations. Regional notification centers are then required to transmit the notification to the Board. The reporting requirement is necessary to inform the Board of damages causing fatalities, serious injuries, or damages to certain types of subsurface installations with greater risk of harm to the public if damaged. The Board's investigators must be notified of these damages to determine if an investigation is necessary and if so, investigate the site of the damage as soon as possible to gather evidence.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **CONTACT PERSON(S)**

Inquiries or specific questions concerning the proposed rulemaking action may be directed to the following contact persons:

**General inquiries:** Diane Arend, Regulations Coordinator  
CAL FIRE / Office of the State Fire Marshal  
2251 Harvard Street, Suite 400  
Sacramento, CA 95815  
[diane.arend@fire.ca.gov](mailto:diane.arend@fire.ca.gov)  
(916) 568-2917

**Substantive or technical questions:**

Tony Marino, Executive Officer  
California Underground Facilities Safe Excavation Board  
2251 Harvard Street, Suite 400  
Sacramento, CA 95815  
[Tony.Marino@fire.ca.gov](mailto:Tony.Marino@fire.ca.gov)  
(916) 767-3370

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact person(s).

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, two forms incorporated by reference in the text of the proposed regulations (Area of Continual Excavation Agreement – Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)); and Area of Continual Excavation Agreement – Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020))), and the initial statement of reasons. Copies may be obtained by contacting the contact person.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding a public hearing and considering all timely and relevant comments received by the Board, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, the Board will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by making a written request to the contact person at the above address or by accessing the website listed below.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of the Proposed Rulemaking, Initial Statement of Reasons, the text of the regulations, forms incorporated by reference in the text of the proposed regulations, and any other materials or documents concerning this rulemaking can be accessed on the Office of the State Fire Marshal Website at:

[http://osfm.fire.ca.gov/codedevelopment/codedevelopment\\_title19development](http://osfm.fire.ca.gov/codedevelopment/codedevelopment_title19development)